

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF CALIFORNIA

GREGORY HOWARD TRUST
dated 5/31/94, by and through its
Trustee, GREGORY D. HOWARD,

Plaintiff,

v.

TEXTRON FINANCIAL
CORPORATION, a Delaware
corporation, et al.,

Defendants.

Case No. 12-CV-423-LAB (JMA)

**ORDER GRANTING IN PART
JOINT MOTION TO MODIFY
SCHEDULING ORDER
[Doc. No. 75];**

**AMENDED SCHEDULING
ORDER**

On September 3, 2014, the parties filed a Joint Motion to Modify Scheduling Order [Doc. No. 75] in which they requested that the discovery cutoff be continued until at least November 30, 2014, and that the remainder of the dates in the case be continued for ninety (90) days. The Court convened a Case Management Conference on September 10, 2014 at 9:00 a.m. to discuss the joint motion. As the Court advised counsel during the conference, the Pretrial Conference and dates related thereto cannot be continued. However, the Court is able to grant the parties a continuance of the discovery and motion filing cutoffs. Additionally, the Court has advanced the Mandatory Settlement Conference at the parties'

1 request.

2 Based on the foregoing, the Court **GRANTS IN PART** the joint
3 motion to modify scheduling order. The Court hereby issues the following
4 amended schedule:

5 1. All motions, other than motions to amend or join parties, or
6 motions in limine, shall be filed on or before **October 20, 2014**. Motions
7 will not be heard or calendared unless counsel for the moving party has
8 obtained a motion hearing date from the law clerk of the judge who will
9 hear the motion. **Be advised that the period of time between the date**
10 **you request a motion date and the hearing date may be up to six**
11 **weeks. Please plan accordingly.** Failure of counsel to timely request a
12 motion date may result in the motion not being heard.

13 Briefs or memoranda in support of or in opposition to any pending
14 motion shall not exceed twenty-five (25) pages in length without leave of
15 the judge who will hear the motion. No reply memorandum shall exceed
16 ten (10) pages without such leave of court.

17 2. All discovery, including expert discovery, shall be completed by
18 all parties on or before **December 1, 2014**. "Completed" means that all
19 discovery must be initiated a sufficient period of time in advance of the
20 cutoff date, so that it may be completed by the cutoff date, taking into
21 account the times for service, notice, and response as set forth in the
22 Federal Rules of Civil Procedure. The Court's procedures for resolving
23 discovery disputes are set forth in Judge Adler's Chambers Rules, which
24 are posted on the Court's website.

25 3. A Mandatory Settlement Conference shall be conducted on
26 **December 16, 2014** at **9:00 a.m.** in the chambers of Magistrate Judge
27 Adler. Counsel shall submit settlement statements to Magistrate Judge
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Adler's chambers no later than **December 9, 2014**.¹ The parties may either submit confidential settlement statements or may exchange their settlement statements. Each party's settlement statement shall set forth the party's statement of the case, identify controlling legal issues, concisely set out issues of liability and damages, and shall set forth the party's settlement position, including the last offer or demand made by that party, and a separate statement of the offer or demand the party is prepared to make at the settlement conference. **The settlement conference briefs shall not be filed with the Clerk of the Court.**

All named parties, all counsel, and any other person(s) whose authority is required to negotiate and enter into settlement shall appear in person at the conference. The individual(s) present at the Mandatory Settlement Conference with settlement authority must have the unfettered discretion and authority on behalf of the party to:

- 1) fully explore all settlement options and to agree during the Mandatory Settlement Conference to any settlement terms acceptable to the party (*G. Heileman Brewing Co., Inc. v. Joseph Oat Corp.*, 871 F.2d 648, 653 (7th Cir. 1989)), 2) change the settlement position of a party during the course of the Mandatory Settlement Conference (*Pitman v. Brinker Int'l, Inc.*, 216 F.R.D. 481, 485-86 (D. Ariz. 2003)), and 3) negotiate a settlement without being restricted by any predetermined level of authority (*Nick v. Morgan's Foods, Inc.*, 270 F.3d 590, 596 (8th Cir. 2001)).**

Governmental entities may appear through litigation counsel only. As

¹Statements under 20 pages in length, including attachments and exhibits, may be e-mailed to efile_adler@casd.uscourts.gov, faxed to (619) 702-9939, or delivered to chambers via the Office of the Clerk of Court at 333 West Broadway, Suite 420, San Diego, California. Statements exceeding 20 pages in length, including attachments and exhibits, must be delivered to chambers via the Office of the Clerk of Court.

1 to all other parties, appearance by litigation counsel only is not acceptable.
2 Retained outside corporate counsel shall not appear on behalf of a
3 corporation as the party who has the authority to negotiate and enter into a
4 settlement. **The failure of any counsel, party or authorized person to**
5 **appear at the Mandatory Settlement Conference as required will result**
6 **in the immediate imposition of sanctions.** All conference discussions
7 will be informal, off the record, privileged, and confidential.

8 4. The parties must comply with the pretrial disclosure
9 requirements of Fed. R. Civ. P. 26(a)(3) on or before **January 12, 2015**.
10 **Please be advised that failure to comply with this section or any other**
11 **discovery order of the Court may result in the sanctions provided for**
12 **in Fed. R. Civ. P. 37, including a prohibition on the introduction of**
13 **experts or other designated matters in evidence.**

14 5. Despite the requirements of Local Rule 16.1.f.2, neither party is
15 required to file a Memorandum of Contentions of Fact and Law at any time.
16 The parties shall instead focus their efforts on drafting and submitting a
17 proposed pretrial order by the time and date specified by Local Rule
18 16.1.f.6.b. The proposed pretrial order shall comply with Local Rule
19 16.1.f.6 and the Standing Order in Civil Cases issued by the Honorable
20 Larry Alan Burns.

21 6. Counsel shall confer and take the action required by Local Rule
22 16.1.f.4.a on or before **January 16, 2015**.

23 7. Counsel for the plaintiff must provide opposing counsel with the
24 proposed pretrial order for review and approval and take any other action
25 required by Local Rule 16.1.f.6.a on or before **January 26, 2015**.

26 8. Written objections, if any, to any party's Fed. R. Civ. P. 26(a)(3)
27 pretrial disclosures shall be filed and served on or before **January 26,**
28 **2015**. **Please be advised that the failure to file written objections to a**

1 party's pretrial disclosures may result in the waiver of such
2 objections, with the exception of those made pursuant to Rules 402
3 (relevance) and 403 (prejudice, confusion or waste of time) of the
4 Federal Rules of Evidence.

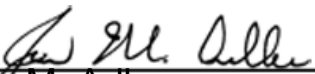
5 9. The Pretrial Order shall be lodged with the district judge's
6 chambers on or before **February 2, 2015** and shall be in the form
7 prescribed in Local Rule 16.1.f.6.

8 10. The final Pretrial Conference is scheduled in the chambers of
9 the Honorable Larry Alan Burns on **February 9, 2015** at **11:30 a.m.** The
10 trial date will be assigned by Judge Burns at the pretrial conference.

11 11. The dates and times set forth herein will not be modified except
12 for good cause shown.

13 **IT IS SO ORDERED.**

14 DATED: September 10, 2014

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16 Jan M. Adler
17 U.S. Magistrate Judge
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